

JOHN L. SCHULTZ
Claimant

PRICKETT & SON INC.
Respondent

CONTINENTAL WESTERN INS. CO.
Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

The Administrative Law Judge (ALJ) found the claimant suffered a 20 percent functional impairment followed by a 39.25 percent work disability beginning October 1, 2002, for the September 5, 1997 date of accident in Docket No. 258,804. The ALJ further

found the claimant did not suffer any additional permanent impairment as a result of the April 19, 2001 date of accident in Docket No. 267,551.

The claimant requests review of the nature and extent of disability in both dockets.

Respondent requests review of the following issues in Docket No. 258,804: (1) nature and extent of disability, specifically whether claimant is entitled to a work disability; (2) whether the respondent is entitled to a credit for overpayment of temporary total disability compensation in Docket No. 258,804, because respondent argues claimant had voluntarily retired from the labor market; and, (3) whether the respondent is obligated to pay the \$1,621 in outstanding medical to Presbyterian St. Luke's Hospital.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award sets out findings of fact and conclusions of law that are detailed, accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Board affirms and adopts the ALJ's findings and conclusions as its own as if specifically set forth herein except as hereinafter noted.

In Docket No. 267,551, it was undisputed the claimant suffered accidental injury arising out of and in the course of his employment. On review the claimant raised the issue of the nature and extent of disability and argues the Board should adopt Dr. Michael H. Munhall's functional impairment rating. The ALJ adopted the treating physician's opinion, Dr. Robert L. Bassett, that claimant did not suffer any permanent impairment as a result of the injuries suffered in that accident. Moreover, the ALJ's Award contains a detailed analysis of the shortcomings with Dr. Munhall's opinion. The Board adopts and affirms the ALJ's finding that Dr. Bassett's opinion is more persuasive and that claimant failed to sustain his burden of proof that he suffered permanent impairment as a result of the April 19, 2001 accident.

In Docket No. 258,804, the Board adopts and affirms the ALJ's analysis and finding that claimant is entitled to a 20 percent functional impairment followed by a 39.25 percent work disability as of October 1, 2002.

The ALJ further determined respondent was entitled to a K.S.A. 44-501(h) credit for Social Security retirement benefits. However, the award paragraph in Docket No. 258,804 contains the calculation of the entire award using only a \$351 payment rate.

However, the calculation paragraph is followed by a paragraph noting claimant's compensation payment rate was determined to be \$351 per week until October 1, 2001, when the payment rate reduced to \$157.15 per week because of the credit for Social

Security benefits. Effective January 1, 2002, the payment rate became \$152.40 per week (based upon claimant receiving an increase in Social Security benefits) and finally, effective January 1, 2003, the payment rate further reduced to \$147.76 per week. And it is noted respondent is to pay compensation at the various rates.

In order to clarify the amounts due under the ALJ's Award, the Board notes that the calculation of an award where there is a change in the disability percentage requires the award be calculated as if the new percentage was the original award, thereafter, the number of disability weeks is reduced by the prior permanent partial disability weeks already paid or due.

Initially, a payment rate must be determined, which in this case is \$351 per week. As previously noted, the payment rate is reduced on October 1, 2001, due to the credit for Social Security retirement benefits claimant began receiving on that date. However, the claimant returned to work for a period of time after his September 5, 1997 accident. As a result he would be limited to his functional impairment for that time period.

Therefore, the calculation of the award begins with determination of the number of disability weeks payable by subtracting from 415 weeks the total number of weeks temporary total disability compensation was paid. The first 15 weeks of temporary total disability compensation is excluded. The remainder is multiplied by the percentage of permanent partial general disability.¹

Herein, the parties stipulated that 69.57 weeks of temporary total disability compensation had been paid. However, 25 weeks of that temporary total disability compensation were paid after October 1, 2002, when claimant received additional treatment and surgery. Accordingly, 29.57 weeks ($44.57 - 15 = 29.57$) would be subtracted from 415 weeks and the remainder of 385.43 ($415 - 29.57 = 385.43$) would be multiplied by the 20 percent functional impairment. Such calculation results in 77.09 weeks for which functional disability compensation is payable.

The payments for the 20 percent functional impairment would all be due and payable before October 1, 2001, and so that portion of the award would all be payable at the \$351 per week payment rate.

The same calculation is made for each subsequent change in the work disability with the additional step of deducting the weeks of previously paid permanent partial disability from the total disability weeks payable as determined by each new calculation.

¹ K.S.A. 1996 Supp. 44-510e(a)(2).

Beginning on October 1, 2002, the award must be recalculated because the claimant suffered a work disability starting on that date. Accordingly, 54.57 weeks ($69.57 - 15 = 54.57$) would be subtracted from 415 weeks and the remainder of 360.43 ($415 - 54.57 = 360.43$) would be multiplied by the 39.25 percent work disability. Such calculation results in 141.47 disability weeks payable. From those weeks, the prior 77.09 weeks of paid functional disability would be deducted resulting in a total of 64.38 disability weeks payable.

From October 1, 2002, through December 31, 2002, a period of 13 weeks, claimant's payment rate reduced to \$152.40 per week due to credit for Social Security benefits. Therefore claimant is entitled to 13 weeks temporary total disability compensation at the rate of \$152.40 per week or \$1,981.20. After January 1, 2003, claimant's payment rate is reduced to \$147.76 per week which results in 12 weeks temporary total disability compensation at \$147.76 per week or \$1,773.12. The remaining 64.38 weeks of permanent partial disability compensation are payable at the payment rate of \$147.76 per week or \$9,512.79.

The claimant is entitled to 44.57 weeks of temporary total disability compensation at the rate of \$351 per week or \$15,644.07 followed by 77.09 weeks of permanent partial disability compensation at the rate of \$351 per week or \$27,058.59 for a 20 percent functional impairment disability followed by 13 weeks of temporary total disability compensation at the rate of \$152.40 per week or \$1,981.20 plus 12 weeks temporary total disability compensation at \$147.76 or \$1,773.12 followed by 64.38 weeks of permanent partial disability compensation at the payment rate of \$147.76 or \$9,512.79, making a total award of \$55,969.77, which is due and ordered paid in one lump sum less amounts previously paid.

AWARD

WHEREFORE, it is the finding of the Board that the Award of Administrative Law Judge Bruce E. Moore dated June 29, 2004, is modified to clarify the computation paragraph and affirmed in all other respects.

The computation paragraph of the Award is clarified to reflect the claimant is entitled to 44.57 weeks of temporary total disability compensation at the rate of \$351 per week or \$15,644.07 followed by 77.09 weeks of permanent partial disability compensation at the rate of \$351 per week or \$27,058.59 for a 20 percent functional impairment disability followed by 13 weeks of temporary total disability compensation at the rate of \$152.40 per week or \$1,981.20 plus 12 weeks temporary total disability compensation at \$147.76 or \$1,773.12 followed by 64.38 weeks of permanent partial disability compensation at the payment rate of \$147.76 or \$9,512.79, making a total award of \$55,969.77, which is due and ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of February 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John C. Nodgaard, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director